

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA**

**1. GREAT LAKES INSURANCES SE )**

**Plaintiff, )**

**vs. )**

**Case No: 5:22-cv-00702-JD**

**2. FREDY VALLE d/b/a VALLE )  
TRUCKING, )**

**3. SILVER STAR CONSTRUCTION )  
COMPANY, INC., )**

**4. TYLON MACKEY, )**

**5. ISRAEL JUAREZ, )**

**6. ORD TRUCKING, INC., and )**

**7. ZURICH AMERICAM INS. CO., )**

**Defendants. )**

**8. ZURICH AMERICAN INS. CO. )**

**Third-Party Plaintiff )**

**9. BERKSHIRE HATHAWAY )  
HOMESTATE INS. CO., and )**

**10. PROGRESSIVE NORTHERN )  
INS. CO. )**

**Third-Party Defendants. )**

**THIRD-PARTY DEFENDANT PROGRESSIVE NORTHERN INSURANCE  
COMPANY'S ANSWER TO THIRD-PARTY PETITION**

**COMES NOW** Third-Party Defendant Progressive Northern Insurance Company (“Progressive”), by and through its counsel of record, Bradley E. Bowlby of the law firm of Starr, Begin & King, PLLC, Tulsa, Oklahoma, and hereby Answers Third-Party Plaintiff Zurich American Ins. Co.’s third-party complaint (Doc. #28) in this matter. Progressive would deny generally and specifically each and every material allegation contained within the

Petition, except which maybe hereinafter specifically admitted.

## **I. PARTIES**

1. Paragraph 1 of Zurich's Third-Party Complaint does not contain any allegation regarding Progressive and, therefore, no response is required of this Third-Party Defendant. To the extent a response is required, Progressive states that it is without sufficient knowledge or information to either admit or deny the allegations contained within Paragraph 1 of Zurich's Third-party Complaint and, therefore, denies same and demands strict proof thereof.

2. Paragraph 2 of Zurich's Third-Party Complaint does not contain any allegation regarding Progressive and, therefore, no response is required of this Third-Party Defendant. To the extent a response is required, Progressive states that it is without sufficient knowledge or information to either admit or deny the allegations contained within Paragraph 2 of Zurich's Third-party Complaint and, therefore, denies same and demands strict proof thereof.

3. Paragraph 3 of Zurich's Third-Party Complaint does not contain any allegation regarding Progressive and, therefore, no response is required of this Third-Party Defendant. To the extent a response is required, Progressive states that it is without sufficient knowledge or information to either admit or deny the allegations contained within Paragraph 3 of Zurich's Third-party Complaint and, therefore, denies same and demands strict proof thereof.

4. Paragraph 4 of Zurich's Third-Party Complaint does not contain any allegation regarding Progressive and, therefore, no response is required of this Third-Party Defendant. To the extent a response is required, Progressive states that it is without sufficient knowledge or information to either admit or deny the allegations contained within Paragraph 4 of Zurich's Third-party Complaint and, therefore, denies same and demands strict proof thereof.

5. Progressive admits the allegations contained within Paragraph 5 of Zurich's Third-Party Complaint.

6. Progressive admits the allegations contained within Paragraph 6 of Zurich's Third-Party Complaint.

## **II. JURISDICTION AND VENUE**

7. Paragraph 7 of Zurich's Third-Party Complaint does not contain any allegation regarding Progressive and, therefore, no response is required of this Third-Party Defendant.

8. Progressive admits the allegations contained within Paragraph 8 of Zurich's Third-Party Complaint.

9. Progressive admits the allegations contained within Paragraph 9 of Zurich's Third-Party Complaint.

10. Paragraph 10 of Zurich's Third-Party Complaint does not contain any allegation regarding Progressive and, therefore, no response is required of this Third-Party Defendant. To the extent a response is required, Progressive states that it is without sufficient knowledge or information to either admit or deny the allegations contained within Paragraph 10 of Zurich's Third-party Complaint and, therefore, denies same and demands strict proof thereof.

11. Paragraph 11 of Zurich's Third-Party Complaint does not contain any allegation regarding Progressive and, therefore, no response is required of this Third-Party Defendant. To the extent a response is required, Progressive states that it is without sufficient knowledge or information to either admit or deny the allegations contained within Paragraph 11 of Zurich's Third-party Complaint and, therefore, denies same and demands strict proof thereof.

12. With regard to the allegations contained within Paragraph 12 of Zurich's Third-Party

Complaint, Progressive admits that its certificate of liability insurance was issued on September 5, 2019; that the effective dates listed thereon; that the effective dates on the certificate are July 12, 2019 – July 12, 2020; that the certificate lists Fredy Valle and Valle Trucking as the insured and Silver Star Construction and its subsidiaries as the certificate holder; that the certificate provides that the combined single limit for liability coverage for each accident is \$1,000,000; and that Progressive filed a Form E with the Oklahoma Corporation Commission on December 5, 2019. Progressive would deny the remaining allegations contained within Paragraph 12 of Zurich’s Third-party Complaint and, therefore, denies same and demands strict proof thereof.

13. Paragraph 13 of Zurich’s Third-Party Complaint does not contain any allegation regarding Progressive and, therefore, no response is required of this Third-Party Defendant.

14. With regard to the allegations contained within Paragraph 14 of Zurich’s Third-Party Complaint, Progressive admits that it had previously filed a “Form K” on December 7, 2018, canceling a previous policy, issued to Valle Trucking. Progressive would deny the remaining allegations contained in Paragraph 14 of Zurich’s Third-Party Complaint and demands strict proof thereof.

15. Progressive denies the allegations contained within Paragraph 15 of Zurich’s Third-Party Complaint and demands strict proof thereof.

16. Progressive states that it is without sufficient knowledge or information to either admit or deny the allegations contained within Paragraph 16 of Zurich’s Third-party Complaint and, therefore, denies same and demands strict proof thereof.

17. Progressive states that it is without sufficient knowledge or information to either admit or deny the allegations contained within Paragraph 17 of Zurich’s Third-party Complaint and, therefore, denies same and demands strict proof thereof.

### **III. STATEMENT OF FACTS**

18. Paragraph 18 of Zurich's Third-Party Complaint does not contain any allegation regarding Progressive and, therefore, no response is required of this Third-Party Defendant. To the extent a response is required, Progressive states that it is without sufficient knowledge or information to either admit or deny the allegations contained within Paragraph 18 of Zurich's Third-party Complaint and, therefore, denies same and demands strict proof thereof.

19. Progressive admits the allegations contained within Paragraph 19 of Zurich's Third-Party Complaint.

20. Progressive admits the allegations contained within Paragraph 20 of Zurich's Third-Party Complaint.

21. Progressive admits the allegations contained within Paragraph 21 of Zurich's Third-Party Complaint.

22. Paragraph 22 of Zurich's Third-Party Complaint does not contain any allegation regarding Progressive and, therefore, no response is required of this Third-Party Defendant. To the extent a response is required, Progressive would admit that the plaintiff's second amended complaint in *Mackey v. Juarez, et. al.*, CJ-2020-233 (Payne), filed August 10, 2021, contains, inter alia, the allegations set forth in Paragraph 22 of Zurich's Third-Party Complaint.

23. Paragraph 23 of Zurich's Third-Party Complaint does not contain any allegation regarding Progressive and, therefore, no response is required of this Third-Party Defendant. To the extent a response is required, Progressive would admit the allegations contained within Paragraph 23 of Zurich's Third-Party Complaint.

24. Paragraph 24 of Zurich's Third-Party Complaint does not contain any allegation regarding

Progressive and, therefore, no response is required of this Third-Party Defendant. To the extent a response is required, Progressive would admit the allegations contained within Paragraph 24 of Zurich's Third-Party Complaint.

25. Paragraph 25 of Zurich's Third-Party Complaint does not contain any allegation regarding Progressive and, therefore, no response is required of this Third-Party Defendant. To the extent a response is required, Progressive states that it is without sufficient knowledge or information to either admit or deny the allegations contained within Paragraph 25 of Zurich's Third-party Complaint and, therefore, denies same and demands strict proof thereof.

26. Paragraph 26 of Zurich's Third-Party Complaint does not contain any allegation regarding Progressive and, therefore, no response is required of this Third-Party Defendant. To the extent a response is required, Progressive states that it is without sufficient knowledge or information to either admit or deny the allegations contained within Paragraph 26 of Zurich's Third-party Complaint and, therefore, denies same and demands strict proof thereof.

27. Paragraph 27 of Zurich's Third-Party Complaint does not contain any allegation regarding Progressive and, therefore, no response is required of this Third-Party Defendant. To the extent a response is required, Progressive would admit that the second amended complaint in *Mackey v. Juarez, et. al.*, CJ-2020-233 (Payne), filed August 10, 2021, contains, inter alia, the allegations set forth in Paragraph 27 of Zurich's Third-Party Complaint. Progressive would deny the remaining allegations contained in Paragraph 14 of Zurich's Third-Party Complaint and demands strict proof thereof.

28. Paragraph 28 of Zurich's Third-Party Complaint does not contain any allegation regarding Progressive and, therefore, no response is required of this Third-Party Defendant. To the extent a response is required, Progressive states that it is without sufficient knowledge or information to

either admit or deny the allegations contained within Paragraph 28 of Zurich's Third-party Complaint and, therefore, denies same and demands strict proof thereof.

29. Paragraph 29 of Zurich's Third-Party Complaint does not contain any allegation regarding Progressive and, therefore, no response is required of this Third-Party Defendant. To the extent a response is required, Progressive states that it is without sufficient knowledge or information to either admit or deny the allegations contained within Paragraph 29 of Zurich's Third-party Complaint and, therefore, denies same and demands strict proof thereof.

30. Paragraph 30 of Zurich's Third-Party Complaint does not contain any allegation regarding Progressive and, therefore, no response is required of this Third-Party Defendant. To the extent a response is required, Progressive states that it is without sufficient knowledge or information to either admit or deny the allegations contained within Paragraph 30 of Zurich's Third-party Complaint and, therefore, denies same and demands strict proof thereof.

31. Progressive admits the allegations contained within Paragraph 31 of Zurich's Third-Party Complaint.

32. Progressive admits the allegations contained within Paragraph 32 of Zurich's Third-Party Complaint.

33. Paragraph 33 of Zurich's Third-Party Complaint does not contain any allegation regarding Progressive and, therefore, no response is required of this Third-Party Defendant. To the extent a response is required, Progressive states that it is without sufficient knowledge or information to either admit or deny the allegations contained within Paragraph 33 of Zurich's Third-party Complaint and, therefore, denies same and demands strict proof thereof.

34. Paragraph 34 of Zurich's Third-Party Complaint does not contain any allegation regarding Progressive and, therefore, no response is required of this Third-Party Defendant. To the extent a

response is required, Progressive states that it is without sufficient knowledge or information to either admit or deny the allegations contained within Paragraph 34 of Zurich's Third-party Complaint and, therefore, denies same and demands strict proof thereof.

35. Paragraph 35 of Zurich's Third-Party Complaint does not contain any allegation regarding Progressive and, therefore, no response is required of this Third-Party Defendant. To the extent a response is required, Progressive states that it is without sufficient knowledge or information to either admit or deny the allegations contained within Paragraph 35 of Zurich's Third-party Complaint and, therefore, denies same and demands strict proof thereof.

36. Paragraph 36 of Zurich's Third-Party Complaint does not contain any allegation regarding Progressive and, therefore, no response is required of this Third-Party Defendant. To the extent a response is required, Progressive states that it is without sufficient knowledge or information to either admit or deny the allegations contained within Paragraph 36 of Zurich's Third-party Complaint and, therefore, denies same and demands strict proof thereof.

37. Paragraph 37 of Zurich's Third-Party Complaint does not contain any allegation regarding Progressive and, therefore, no response is required of this Third-Party Defendant. To the extent a response is required, Progressive states that it is without sufficient knowledge or information to either admit or deny the allegations contained within Paragraph 37 of Zurich's Third-party Complaint and, therefore, denies same and demands strict proof thereof.

#### **IV. CAUSE OF ACTION**

38. Paragraph 38 of Zurich's Third-Party Complaint does not contain any allegation regarding Progressive and, therefore, no response is required of this Third-Party Defendant.

39. Progressive states that it is without sufficient knowledge or information to either admit or



deny the allegations contained within Paragraph 39 of Zurich's Third-party Complaint and, therefore, denies same and demands strict proof thereof.

40. Progressive denies the allegations contained within Paragraph 40 of Zurich's Third-Party Complaint.

41. Paragraph 41 of Zurich's Third-Party Complaint does not contain any allegation regarding Progressive and, therefore, no response is required of this Third-Party Defendant. To the extent a response is required, Progressive states that it is without sufficient knowledge or information to either admit or deny the allegations contained within Paragraph 41 of Zurich's Third-party Complaint and, therefore, denies same and demands strict proof thereof.

42. Progressive denies the allegations contained within Paragraph 42 of Zurich's Third-Party Complaint.

43. Paragraph 43 of Zurich's Third-Party Complaint does not contain any allegation regarding Progressive and, therefore, no response is required of this Third-Party Defendant. To the extent a response is required, Progressive states that it is without sufficient knowledge or information to either admit or deny the allegations contained within Paragraph 43 of Zurich's Third-party Complaint and, therefore, denies same and demands strict proof thereof.

44. Progressive denies the allegations contained within Paragraph 44 of Zurich's Third-Party Complaint.

45. Paragraph 45 of Zurich's Third-Party Complaint does not contain any allegation regarding Progressive and, therefore, no response is required of this Third-Party Defendant. To the extent a response is required, Progressive states that it is without sufficient knowledge or information to either admit or deny the allegations contained within Paragraph 45 of Zurich's Third-party Complaint and, therefore, denies same and demands strict proof thereof.

46. Progressive denies the allegations contained within Paragraph 46 of Zurich's Third-Party Complaint.

## **V. PRAYER FOR RELIEF**

47. Progressive denies the claims in the prayer for relief of Zurich's Third-Party Complaint.

## **VI. AFFIRMATIVE DEFENSES**

48. By asserting the following defenses Progressive does not concede that it has the burden of proof or persuasion of any of these issues, such determination to be made by applicable law. As discovery has not yet begun, Progressive reserves the right to amend, supplement or withdraw its affirmative defenses as additional facts concerning its defenses become known. As separate and distinct affirmative defenses, Plaintiff asserts the following:

49. Zurich has failed to state a claim upon which relief may be granted.

50. Zurich did not have a reasonable expectation of coverage.

51. Progressive does not have a contractual duty to provide Silver Star with a defense or indemnity in the underlying lawsuit.

52. Zurich is barred by waiver and estoppel.

53. Progressive does not have a duty under the Hauling Agreement to provide coverage.

54. Progressive's denial of coverage is not against public policy.

55. Zurich's claims are premature and/or lacks ripeness.

56. Progressive reserves the right to amend its answer to assert additional defenses.

**WHEREFORE**, premises considered, Third-Part Defendant Progressive Northern Insurance Company, having fully answered the Complaint of Third-Party Plaintiff Zurich American Ins. Co., prays for judgment in its favor, and against the Third-Party Plaintiff, together with an award of its costs, attorney fees, and such other and further relief the Court deems just and equitable.

Respectfully submitted,

**STARR, BEGIN, & KING, PLLC**

s/Bradley E. Bowlby

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*Attorney for Def. Progressive Northern Ins. Co.*

**CERTIFICATE OF SERVICE**

I hereby certify that on March 10, 2023, I electronically transmitted the attached document to the Clerk of Court using the Electronic Case Filing System for filing. Based on the records currently on file in this case, the Clerk of Court will transmit a Notice of Electronic Filing to those registered participants of the ECF System.

s/Bradley E. Bowlby